IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7840 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R.K. VAKARIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7840 of 2001

MR IS SUPEHIA for Petitioner No. 1

MR PR ABICHANDANI AGP for Respondent No. 1-2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/11/2002

ORAL JUDGEMENT

Heard the learned advocates.

Feeling aggrieved by his non-promotion to the

post of Police Inspector, the petitioner, a Police Sub-Inspector has preferred the present petition under Article 226 of the Constitution of India.

It appears that under Order dated 17th April, 2001 made by the Director General & Inspector General of Police, some 18 Police Sub-Inspectors were promoted as Police Inspectors. Some of the said Police Sub-Inspectors were junior to the petitioner. Thus, the petitioner was superseded in the matter of promotion. On the representation made by the petitioner, under communication dated 30th April, 2001, the petitioner was informed that his case for promotion was considered by the Departmental Promotion Committee. However, having regard to his service records, the said Committee did not find the petitioner fit for promotion. Since then, some more promotions have been made under Order dated 25th June, 2001. A disciplinary action was also initiated against the petitioner and under Order dated 3rd April, 2002, the petitioner has been visited with the punishment of fine of Rs. 2,500/=.

Mr. Supehia has submitted that no adverse entries have been made in the service record of the petitioner. The disciplinary action referred to hereinabove was initiated after the petitioner was superseded i.e., on the date when the Departmental Promotion Committee considered the case of the petitioner, no disciplinary action was pending against the petitioner. He has, therefore, submitted that in absence of any adverse remarks or disciplinary action, the petitioner ought not have been found unfit for promotion.

I am afraid, I am unable to agree with the contention raised by Mr. Supehia. Mr. Supehia has admitted that promotion to the post of Police Inspector is made from amongst the Police Sub-Inspectors on the basis of proved merit. If that is the criterion for promotion, mere absence of adverse remarks or of pendency of disciplinary action would not entitle an officer to promotion. A Police Sub-Inspector is required to have positive service record to be found fit for promotion on the basis of proved merit. All that the petitioner has is a right to be considered for promotion. The petitioner's case for promotion has been considered by the Departmental Promotion Committee. It is not the case of the petitioner that the decision of the said Committee is based on extraneous materials or that the relevant materials have not been considered by the Committee. If the Committee has considered the case of the petitioner

for promotion, keeping in view the relevant materials and on the basis of correct principles, the Court cannot sit in appeal over the decision of the Committee. Hence, no interference is warranted. Petition is dismissed in limine. Notice is discharged.

[Miss R.M Doshit, J.]

Prakash*